

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE APPLIED SIGNAL
TECHNOLOGY, INC. SECURITIES
LITIGATION

Master File No. C 05-1027 SBA
Consolidated Action

CLASS ACTION

~~[PROPOSED]~~ STIPULATED PROTECTIVE
ORDER

This Document Relates To:
ALL ACTIONS

1. PURPOSE AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

1 **2. DEFINITIONS**

2 2.1 Party: any party to this action, including all of its officers, directors,
3 employees, consultants, retained experts, and outside counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner generated, stored, or maintained (including, among other things, testimony,
6 transcripts, or tangible things) that are produced or generated in disclosures or responses to
7 discovery in this matter.

8 2.3 "Confidential" Information or Items: sensitive information (regardless of
9 how generated, stored or maintained) or tangible things whose disclosure to another Party or non-
10 party would create a substantial risk of serious injury that could not be avoided by less restrictive
11 means.

12 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14 2.5 Producing Party: a Party or non-party that produces Disclosure or
15 Discovery Material in this action.

16 2.6 Designating Party: a Party or non-party that designates information or
17 items that it produces in disclosures or in responses to discovery as "Confidential."

18 2.7 Protected Material: any Disclosure or Discovery Material that is designated
19 as "Confidential."

20 2.8. Outside Counsel: attorneys who are not employees of a Party but who are
21 retained to represent or advise a Party in this action.

22 2.9 House Counsel: attorneys who are employees of a Party.

23 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well
24 as their support staffs).

25 2.11 Expert: a person with specialized knowledge or experience in a matter
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
27 witness or as a consultant in this action and who is not a past or a current employee of a Party or
28 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an

1 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
2 trial consultant retained in connection with this litigation.

3 2.12 Professional Vendors: persons or entities that provide litigation support
4 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
5 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
6 subcontractors.

7 **3. SCOPE**

8 The protections conferred by this Stipulation and Order cover not only Protected Material
9 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
10 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
11 parties or counsel to or in court or in other settings that might reveal Protected Material.

12 **4. DURATION**

13 Even after the termination of this litigation, the confidentiality obligations imposed by this
14 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
15 otherwise directs.

16 **5. DESIGNATING PROTECTIVE MATERIAL**

17 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

18 Each Party or non-party that designates information or items for protection under this Order must
19 take care to limit any such designation to specific material that qualifies under the appropriate
20 standards. A Designating Party must take care to designate for protection only those parts of
21 material, documents, items, or oral or written communications that qualify - so that other portions
22 of the material, documents, items, or communications for which protection is not warranted are
23 not swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
26 unnecessarily encumber or retard the case development process, or to impose unnecessary
27 expenses and burdens on other parties), expose the Designating Party to sanctions.

28 If it comes to a Party's or a non-party's attention that information or items that it

1 designated for protection do not qualify for protection at all, or do not qualify for the level of
2 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
3 withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
6 material that qualifies for protection under this Order must be clearly so designated before the
7 material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (apart from transcripts of
10 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
11 “CONFIDENTIAL” at the top of each page that contains protected material. If only a portion or
12 portions of the material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

14 A Party or non-party that makes original documents or materials available for inspection
15 need not designate them for protection until after the inspecting Party has indicated which
16 material it would like copied and produced. During the inspection and before the designation, all
17 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
18 inspecting Party has identified the documents it wants copied and produced, the Producing Party
19 must determine which documents, or portions thereof, qualify for protection under this Order,
20 then, before producing the specified documents, the Producing Party must affix the appropriate
21 legend (“CONFIDENTIAL”) at the top of each page that contains Protected Material. If only a
22 portion or portions of the material on a page qualifies for protection, the Producing Party also
23 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
24 margins).

25 (b) for testimony given in deposition or in other pretrial or trial
26 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
27 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
28 and further specify any portions of the testimony that qualify as “CONFIDENTIAL.” When it is

1 impractical to identify separately each portion of testimony that is entitled to protection, and when
2 it appears that substantial portions of the testimony may qualify for protection, the Party or non-
3 party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition
4 or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the
5 testimony as to which protection is sought. Only those portions of the testimony that are
6 appropriately designated for protection within the 20 days shall be covered by the provisions of
7 this Stipulated Protective Order.

8 Transcript pages containing Protected Material must be separately bound by the court
9 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL,” as
10 instructed by the Party or non-party offering or sponsoring the witness or presenting the
11 testimony.

12 (c) for information produced in some form other than documentary,
13 and for any other tangible items, that the Producing Party affix in a prominent place on the
14 exterior of the container or containers in which the information or item is stored the legend
15 “CONFIDENTIAL.” If only portions of the information or item warrant protection, the
16 Producing Party, to the extent practicable, shall identify the protected portions.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items as “Confidential” does not, standing alone,
19 waive the Designating Party’s right to secure protection under this Order for such material. If
20 material is appropriately designated as “Confidential” after the material was initially produced,
21 the Receiving Party, on timely notification of the designation, must make reasonable efforts to
22 assure that the material is treated in accordance with the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
25 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
26 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
27 waive its right to challenge a confidentiality designation by electing not to mount a challenge
28 promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and

1 in a secure manner that ensures that access is limited to the persons authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
3 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
4 disclose any information or item designated CONFIDENTIAL only to:

5 (a) the Receiving Party’s Outside Counsel of record in this action, as
6 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
7 for this litigation;

8 (b) the parties in this action and their officers, directors, and employees
9 (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
10 this litigation;

11 (c) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation;

13 (d) the Court and its personnel;

14 (e) court reporters, their staffs, and professional vendors to whom
15 disclosure is reasonably necessary for this litigation;

16 (f) during their depositions, witnesses in the action to whom disclosure
17 is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that
18 reveal Protected Material must be separately bound by the court reporter and may not be
19 disclosed to anyone except as permitted under this Stipulated Protective Order.

20 (g) the author of the document or the original source of the
21 information.

22 7.3 Procedures for Approving Disclosure of “CONFIDENTIAL” Information
23 or Items to “Experts.”

24 (a) Unless otherwise ordered by the court or agreed in writing by the
25 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any
26 information or item that has been designated “CONFIDENTIAL” first must make a written
27 request to the Designating Party that (1) identifies the specific CONFIDENTIAL information that
28 the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the

1 Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's
2 current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity
3 from whom the Expert has received compensation for work in his or her areas of expertise or to
4 whom the expert has provided professional services at any time during the preceding five years,
5 and (6) identifies (by name and number of case, filing date, and location of court) any litigation in
6 connection with which the Expert has provided professional services during the preceding five
7 years.

8 (b) A Party that makes a request and provides the information specified
9 in the preceding paragraph may disclose the subject Protect Material to the identified Expert
10 unless, within seven court days of delivering the request, the Party receives a written objection
11 from the Designating Party. Any such objection must set forth in detail the grounds on which it is
12 based.

13 (c) A Party that receives a timely written objection must meet and
14 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
15 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
16 Expert may file a motion as provided in Civil Local Rule 7 (in compliance with Civil Local Rule
17 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe
18 the circumstances with specificity, set forth in detail the reasons for which the disclosure to the
19 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and
20 suggest any additional means that might be used to reduce that risk. In addition, any such motion
21 must be accompanied by a competent declaration in which the movant describes the parties'
22 efforts to resolve the matter by agreement (i.e., the extent and content of the meet and confer
23 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to
24 approve the disclosure.

25 In any proceeding the Party opposing disclosure to the Expert shall bear the burden of
26 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
27 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.
28

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
2 **IN OTHER LITIGATION.**

3 If a Receiving Party is served with a subpoena or an order issued in other litigation that
4 would compel disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax
6 or email pdf, if possible) immediately and in no event more than three court days after receiving
7 the subpoena or order. Such notification must include a copy of the subpoena or court order.

8 The Receiving Party also must immediately inform in writing the Party who caused the
9 subpoena or order to issue in the other litigation that some or all the material covered by the
10 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
11 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
12 caused the subpoena or order to issue.

13 The purpose of imposing these duties is to alert the interested parties to the existence of
14 this Protective Order and to afford the Designating Party in this case an opportunity to try to
15 protect its confidentiality interests in the court from which the subpoena or order issued. The
16 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
17 confidential material – and nothing in these provisions should be construed as authorizing or
18 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

19 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Stipulated Protective
22 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
23 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
24 and (c) inform the person or persons to whom unauthorized disclosures were made of all the
25 terms of this Order.

26 **10. FILING PROTECTED MATERIAL.** Without written permission from the
27 Designating Party or a court order secured after appropriate notice to all interested persons, a
28 Party may not file in the public record in this action any Protected Material. A Party that seeks to

1 file under seal any Protected Material must comply with Civil Local Rule 79-5.

2 **11. FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing by the
3 Producing Party, within sixty days after the final termination of this action, each Receiving Party
4 must return all Protected Material to the Producing Party. As used in this subdivision, “all
5 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
6 reproducing or capturing any of the Protected Material. With permission in writing from the
7 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
8 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
9 submit a written certification to the Producing Party (and, if not the same person or entity, to the
10 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
11 the Protected Material that was returned or destroyed and that affirms that the Receiving Party has
12 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
13 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
14 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
15 correspondence or attorney work product, even if such materials contain Protected Material. Any
16 such archival copies that contain or constitute Protected Material remain subject to this Protective
17 Order as set forth in Section 4 (DURATION), above.

18 **12. MISCELLANEOUS**

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the Court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this
22 Protective Order no Party waives any right it otherwise would have to object to disclosing or
23 producing any information or item on any ground not addressed in this Stipulated Protective
24 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
25 the material covered by this Protective Order.

26 12.3 Inadvertent Production of Privileged Material. This Order does not affect
27 or alter a Producing Party’s rights to refuse to disclose information properly subject to the
28 attorney-client privilege or the attorney work-product doctrine. If a party, through inadvertence,

1 produces or provides discovery that it believes is subject to a claim of attorney-client privilege,
 2 work product immunity, or is otherwise protected from disclosure, the Producing Party may give
 3 prompt and timely written notice to the Receiving Party or Parties that the document is subject to
 4 a claim of attorney-client privilege, work-product immunity, or other protection from disclosure,
 5 and request that the discovery be returned to the Producing Party. The Receiving Party or Parties
 6 shall within five court days return to the Producing Party such discovery. Return of the document
 7 by the Receiving Party shall not constitute an admission or concession, or permit any inference,
 8 that the returned document or thing is, in fact, properly subject to a claim of attorney-client
 9 privilege, work-product immunity, or other protection from disclosure, nor shall it foreclose any
 10 party from moving the Court for an order that such document or thing has been improperly
 11 designated or should be discoverable and/or usable in this action for reasons other than waiver
 12 caused by the inadvertent production.

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 Dated: November 5, 2008

IZARD NOBEL, LLP

16 By: /s/ Mark P. Kindall

MARK P. KINDALL
 Attorneys for Lead Plaintiff FRANK
 WHITING

19 Dated: November 5, 2008

DLA PIPER LLP (US)

21 By /s/ David Priebe

DAVID PRIEBE
 Attorneys for Defendants
 APPLIED SIGNAL TECHNOLOGY, INC.,
 GARY YANCEY and JAMES DOYLE

24 PURSUANT TO STIPULATION, IT IS SO ORDERED

26 Dated: November 13, 2008



1 I, RAJIV DHARNIDHARKA, am the ECF User whose ID and password are being used
2 to file this [PROPOSED] STIPULATED PROTECTIVE ORDER. In compliance with General
3 Order 45, X.B., I hereby attest that Mark P. Kindall and David Priebe have concurred in this
4 filing.

5 Dated: November 5, 2008

DLA PIPER LLP (US)

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7 By /s/ Rajiv Dharnidharka
8 RAJIV DHARNIDHARKA
9 Attorneys for Defendants
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